

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

MIDFIRST BANK,

Plaintiff,

v.

PATRICK SMITH,

Defendant.

CIVIL ACTION NO. 3:06-CV-0603

(JUDGE CAPUTO)

MEMORANDUM

Plaintiff Midfirst Bank filed its Complaint seeking an *in rem* judgment against Defendant Patrick Smith pursuant to mortgage foreclosure. (Doc. 1.) Although Plaintiff asserts that the Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332, the Court finds that Plaintiff has failed to properly allege diversity of citizenship in the Complaint.

"It is . . . well established that when jurisdiction depends upon diverse citizenship the absence of sufficient averments or of facts in the record showing such required diversity of citizenship is fatal and cannot be overlooked by the court, even if the parties fail to call attention to the defect, or consent that it may be waived." *Thomas v. Bd. of Trs.*, 195 U.S. 207, 211 (1904). Moreover, "[w]hen the foundation of federal authority is, in a particular instance, open to question, it is incumbent upon the courts to resolve such doubts, one way or the other, before proceeding to a disposition of the merits." *Carlsberg Res. Corp. v. Cambria Sav. & Loan Ass'n*, 554 F.2d 1254, 1256 (3d Cir. 1977); see also FED R. CIV. P. 12(h)(3).

Here, Plaintiff's Complaint fails to sufficiently aver facts showing complete diversity

of citizenship. For purposes of diversity of citizenship, a corporation is a citizen of “the State where it has its principal place of business” and “the State by which it has been incorporated.” 28 U.S.C. § 1332(c)(1). Although Plaintiff indicated that its principal place of business is 999 N.W. GRAND BOULEVARD SUITE 100 OKLAHOMA CITY, OK 73118 (Doc. 1, ¶3), Plaintiff has not alleged any facts by which the Court can discern Plaintiff’s State of incorporation. Accordingly, the Court will dismiss the Complaint for lack of subject matter jurisdiction pursuant to Rule 12(h)(3) of the Federal Rules of Civil Procedure.

An appropriate order shall follow.

March 31, 2006
Date

/s/ A. Richard Caputo
A. Richard Caputo
United States District Judge

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ORDER

NOW, this 31st day of March, 2006, **IT IS HEREBY ORDERED** that:

- (1) Plaintiff's Complaint (Doc. 1) is **DISMISSED without prejudice**.
- (2) The Clerk of the Court shall mark this case **CLOSED**.

/s/ A. Richard Caputo
A. Richard Caputo
United States District Judge